

**Draft Minutes
COMMISSION FOR MH/DD/SAS
Rules Committee**

**Holiday Inn-North
2805 Highwoods Blvd., Raleigh, NC 27604**

Wednesday, October 19, 2005

Attending:

Rules Committee Members: Floyd McCullouch, Pender McElroy, Connie Mele, Martha Martinat, Ellen Russell, Mazie Fleetwood, Emily Moore, Frederica Stelle, Dorothy Crawford, Clayton Cone, Tom Ryba, Ann Forbes, Ellen Russell, George Jones, Jerry Ratley

Ex-Officios: Joe Donovan, Deby Dihoff,

Excused: Anna Scheyett, Lois T. Batton, Buren Harrelson, William Sims, MD (excused), Martha Macon

Division Staff: Steven Hairston, Chris Phillips, Stuart Berde, Glenda Stokes, Sonya Brown, Nancy Farrar-Talbert, Cindy Kornegay, Stacy Silvia, Vanessa Holman,

Others: Rich Slipsky, Steve Jordan, Andy Ellen, Charles Franklin, Donald Grantham, Susan Pollitt, Beth Hardy, John Crawford

Handouts:

Mailed: October 19, 2005 Rules Committee Agenda, July13, 2005 Rules Committee Minutes, Proposed Amendment for Controlled Substances Schedule V 10A NCAC 26F .0106, Proposed Adoption Controlled Substances Reporting System 10A NCAC 26E .0600, Non-Medicaid Appeals Process, and Statutes and Rule Reference Materials. **Additional Information:** Notice of Advisory Committee meeting cancellation and directions

❖ **Welcome, Introduction and Approval of Minutes:**

- Chairman Floyd McCulloch called the meeting to order at 9:50 a.m.
- Introduced newly appointed Commission Member Jerry Ratley is an SBI agent. He was appointed to the Commission as the Controlled Substance Expert and replacing the vacancy of Lou Grubb Adkins.
- A moment of silence was requested to honor the soldiers in Iraq, and the victims of Katrina in Louisiana and Mississippi.
- Introductions of all Commission members, Division staff and visitors

The Rules Committee unanimously approved the minutes of the July 13, 2005 Rules Committee.

- Mr. McElroy informed the Rules Committee of the new Commission for MH/DD/SA Services and its committees for 2006.
- Martha Martinat requested that Division staff research for the next year to see if an evening meeting of the Rules and Advisory Committee could be held prior to the Commission meeting as a cost saving method. She asks that the information be present to the Commission at the November meeting. Mr. McCullouch and Mr. McElroy stated that to allow changes to rules takes approximately 30 days and having the meetings at those times would be difficult to make the changes needed. They can have further discussion at the Commission meeting in November.

❖ **Controlled Substance Schedules:**

Nancy Talbert a Drug Inspector for the DMH/DD/SAS, Justice Innovations-Drug Unit presented the amendments for Controlled Substances Schedule V 10A NCAC 26F .0106. Effective July 28, 2005 the Drug Enforcement Administration (DEA) placed Pregablin into Schedule V and the Division is asking that Pregablin is placed on Schedule V of the NC Controlled Substance Act. The trade name is Lyrica™. Its primary use is for neuropathic pain management associated with diabetic peripheral neuropathy and postherpetic neuralgia. Produce similar sedative/hypnotic effect as valium or diazepam. It is only available in the pill form and there are no street names.

The Rules Committee unanimously approved with no additional changes the proposed amendments for Controlled Substances Schedule V 10A NCAC 26F .0106 is forwarded to the Full Commission for action on November 14, 2005.

❖ **Controlled Substance Reporting Systems:**

Sonya Brown the Team Leader of the DMH/DD/SA Services, Justice Innovations Team presented the Controlled Substance Reporting System as mandated in Senate Bill 622 included Legislation which instructs the DHHS to establish a reporting system of prescriptions for all Schedule II through V controlled substances. It is intended to improve the State's ability to identify controlled substance abusers or misusers and refer them for treatment, and to identify and stop diversion of prescription that will not impede the appropriate medical utilization of licit controlled substances. Wholesalers or any in office administration is not required to report. The legislation goes into effect January 1, 2005 and the Division anticipates having the system operational around October 2006.

The Commission expressed concern in regards to who would have access to the records. Ms. Brown directed them to G.S 90-113.64(a)-(d) addressed who would have access to the system.

Mr. McCulloch would like to know if State Institutions that permit the AP/LMEs to purchase drugs from their pharmacy are required to report to this system. Ms. Brown said that she did not know and would find out.

Debbie Dihoff recommended that reporting results are shared with the Commission.

Ann Forbes would like more information on how successful Controlled Substance Reporting has been for other States using this system.

The Rules Committee unanimously approved with additions the proposed adoption for Controlled Substances Reporting Systems 10A NCAC 26E .0600 is

forwarded to the Full Commission for action on November 14, 2005 with rule .0604 Requirements for Transmission of Data completed, submission of a report to the Commission for MH/DD/SA Services six (6) months after the system is implemented, and a follow-up report submitted to the Commission for MH/DD/SAS the 12th month after the system has been implemented.

❖ Public Comment

Debbie Dihoff commented not approving the Non-Medicaid Appeals because opportunity did not present itself for the public and providers to have any input in the development of the rules. She urges the Rules Committee to be sensitive to the fragile environment surrounding mental health and think about how receptive to how difficult things are on the service provider side, AP/LMEs' perspective because of some of the current rules that are unclear and to relate to current services provided by the AP/LMEs and the rules committee need to approach the task in a pro-mental health way in order to preserve services and simplify the rules.

Mr. McElroy expressed that there are other view points from the committee and commission that will enable the committee to simplify rules to make the process and system more efficient is something the committee has always tried to do. He said he did not disagree with Ms. Dihoff's but suggested to allow rules come before the committee and approach the rules with an open mind. Once the committee has the opportunity to review the rules the vote could be to hold the rules or allow them to go forward. He acknowledged that her concern was with the rules committee process and he assured her that purposely the committee represents different view points and they will not "rubber stamp" anything that isn't acceptable.

Many of the Rules Committee members were displeased with the method, which they received the information needed for the committee meetings, therefore a vote was made to see which committee members would prefer a hard copy mailed opposed to committee members that would prefer the information sent electronically.

The Rules Committee voted 9(preferred mail) to 6(preferred electronic) that hard copies of the information for each Rules Committee meeting will be mailed to the Rules Committee members and Steven Hairston will review all changes (if necessary) with Committee members before the presenters come before the Committee.

❖ Non-Medicaid Appeals Process

Stuart Berde, Team Leader of the DMH/DD/SA Services' Customer Service Team presented the proposed adoption of the Non-Medicaid Appeals Process developed to provide Non-Medicaid eligible consumers opportunities to appeal decisions by area/county programs to deny, suspend, reduce or terminate services to the Director of DMH/DD/SA Services. The rule is required by G.S. 143B-147 (a)(9). The rule establishes filing requirements as well as procedures for DMH/DD/SA Services panel hearing decisions and requires final decision to be issued by the area/county program. The following changes were made:

27I .0601 Scope- no changes were made but the Commission asked who will pick up the tab if the area/county program decides to continue the services during the appeals process. Mr. Berde stated that a majority of the time an area/county program will

continue services as a courtesy until the final decision has been reached but it isn't an entitlement to the consumer.

27I .0605 Hearing Schedule and Composition of the Panel:

- (a) The Director shall convene a four member panel
- (b) The members of the panel shall include:
 - (3) A CFAC member that is not apart of the LME in the appeal
 - (4) Non-voting individual who represents the Division
- (g) The Chairperson shall notify the client, other members of the panel and the area authority...

27I .0606 Panel Hearing Procedures:

- (a) The chairperson functions include
 - (2) Shall afford the opportunity...
- (b) The panel functions include
 - (1) Shall set limits on the number of people...
 - (2) Shall impose time limits
 - (3) Shall have authority to conduct proceedings in an orderly manner
- (e) An individual present at the panel hearing shall address only a member of the panel who asks a question of that individual is deleted replaced by paragraph (b)(3)

*27I .0607 Panel Decision Finding was changed to **Panel Findings and Decisions:***

- (a) The Panel findings and decisions...
- (b) The standard of review for the panel is whether the findings and decision...
- (c) The findings and decisions of the panel shall be by majority vote and submitted in writing.
- (f) All panel findings and decisions shall be reached...

The Rules Committee unanimously approved with additions and changes the proposed adoption of the rules for Non-Medicaid Appeals Process 10A NCAC 27I .0600 to the Commission for action on November 14, 2005

Chairman McCullough gave a summary of a meeting with the Secretary of DHHS, Mike Moseley, Leza Wainwrigth, David Swann, Director of Pathways, NC Council and Durham County Commissioner just to name a few attendees. They discussed topics such as there would no longer be across the board cuts, LME will be able to determine allowances instead of DMH, and the LME not UR be allowed to provide service.

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